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10/822,829	04/13/2004	Shmuel Levy	P-6389-US	3259
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PEARL COHEN ZEDEK LATZER, LLP 1500 BROADWAY, 12TH FLOOR NEW YORK, NY 10036				
			EXAMINER	
			NGUYEN, LEON VIET Q	
			ART UNIT	PAPER NUMBER
			2611	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/822,829

Applicant(s)

LEVY, SHMUEL

Examiner

Leon-Viet Q. Nguyen

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-30 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/19/07 has been entered.

### ***Response to Arguments***

1. This office action is in response to communication filed on 12/19/07. Claims 4 and 31 have been cancelled. Claims 1 – 3, 5 - 30, and 32 are pending on this application.
2. Applicant's arguments with respect to claims 1-3, 5-30, and 32 have been considered but are moot in view of the new ground(s) of rejection.

### ***Response to Remarks***

Regarding claim 1, applicant asserts that neither Greenstein nor Dabak teach “adaptively grouping receivers according to a desired coding mode received with the received channel state information” and that the inherency is improper (Remarks page 9).

Examiner agrees however the argument is moot in view of the new grounds of rejection.

In response to the arguments of claims 2-32, see the response to the rejection of claim 1 above.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claim 1, 6, 7, 9, 11, 13, 16, 17, 25, 26, and 28 are rejected under 35**

**U.S.C. 103(a) as being unpatentable over Greenstein et al (US6131016) in view of Dabak et al (US20040071118).**

Re claim 1, Greenstein discloses a method comprising:

adaptively and separately selecting a coding mode of an orthogonal frequency division multiplexing sub-carrier symbol of a data stream in an orthogonal frequency division multiplexing channel (col. 3 lines 59-63, col. 4 line 63 – col. 5 line 1, it well known in the art to employ some coding mode for encoding the transmitted data) according to a received channel state information that relates to the orthogonal frequency division multiplexing sub-carrier (col. 4 lines 58-63); and

adaptively grouping receivers according to a desired coding mode received with the received channel state information (col. 4 lines 31-34 and lines 58-63. It would be obvious to one of ordinary skill in the art to *group* all the receivers if there is only a single coding mode. The group would merely be a term to classify all of the antennas).

Greenstein fails to teach wherein said coding mode is selectable so that said sub-carrier is able to support the sensitivity required for transmitting in the selected mode. However Dabak teaches wherein a coding mode is selectable so that said sub-carrier is able to support the sensitivity required for transmitting in the selected mode (¶0032. It is well known in the art that OFDM signals are encoded at the transmitter. Furthermore no specific coding mode is claimed, so any coding mode can be interpreted as the coding mode. The signal gain being adjusted to adjust for any frequency sensitivity in a transmit antenna and fitting the data stream to any required spectral restrictions is interpreted as selecting a coding mode to support the required sensitivity).

Therefore taking the combined teachings of Greenstein with Dabak as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method of Dabak into the method of Greenstein. The motivation to combine Dabak and Greenstein would be to improve spectral utilization and immunity to interference (¶0029).

Re claim 6, Greenstein teaches a method comprising:

coding symbols of a first subset of sub-carriers of an orthogonal frequency division multiplexing channel in a first mode (col. 3 lines 5-6 and 59-62 of Greenstein, the OFDM signal transmitted with the first pilot tone is interpreted to be in a first mode); and

coding symbols of a second subset of sub-carriers of an orthogonal frequency division multiplexing channel in a second mode (col. 3 lines 6-7 and 59-62 of Greenstein, the OFDM signal transmitted with the first pilot tone is interpreted to be in a second mode).

Greenstein fails to teach wherein said coding mode is selectable so that said sub-carrier is able to support the sensitivity required for transmitting in the selected mode. However Dabak teaches wherein a coding mode is selectable so that said sub-carrier is able to support the sensitivity required for transmitting in the selected mode (¶0032. It is well known in the art that OFDM signals are encoded at the transmitter. Furthermore no specific coding mode is claimed, so any coding mode can be interpreted as the coding mode. The signal gain being adjusted to adjust for any frequency sensitivity in a transmit antenna and fitting the data stream to any required spectral restrictions is interpreted as selecting a coding mode to support the required sensitivity).

Therefore taking the combined teachings of Greenstein with Dabak as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method of Dabak into the method of Greenstein. The

motivation to combine Dabak and Greenstein would be to improve spectral utilization and immunity to interference (¶0029).

Re claim 7, the modified invention of Greenstein teaches a method comprising:  
transmitting a first group of symbols of sub-carriers of an orthogonal frequency division multiplexing channel via a first antenna (transmission circuit 202 transmitting via antenna 15 in fig. 2A of Greenstein, col. 3 lines 59-62 of Greenstein); and  
transmitting a second group of symbols of sub-carriers of an orthogonal frequency division multiplexing channel via a second antenna (transmission circuit 203 transmitting via antenna 16 in fig. 2A of Greenstein, col. 3 lines 59-62 of Greenstein).

Re claim 9, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 1. It would be obvious and necessary to have an apparatus to perform the method as claimed in claim 1.

Re claim 11, the modified invention of Greenstein teaches an apparatus comprising a multiple-in-multiple-out receivers transmitters system (fig. 1 of Greenstein, col. 4 lines 31-35 of Greenstein. The base station has multiple transmit antennas and the receiving terminal may have multiple receive antennas).

Re claim 13, the modified invention of Greenstein teaches an apparatus comprising:

a first transmitter to transmit the symbol (transmit antenna 15 in fig. 2A of Greenstein); and

a second transmitter (transmit antenna 16 in fig. 2A of Greenstein) to transmit a coded symbol that is coded according to one or more coding mode (it would be obvious and necessary to code a symbol to be transmitted in a receiver).

Re claim 16, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 1. It would be inherent to have an apparatus to perform the method as claimed in claim 1. Furthermore, the predetermined criterion is interpreted to be the same as the received channel state information in claim 1.

Re claim 17, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 7.

Re claim 25, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 16. It would be obvious and necessary to have a station including the coding mode selector as claimed in claim 16.

Re claim 26, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 17.



Re claim 28, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 1. It would be obvious and necessary to have a storage medium, having stored instructions thereon, which executes the method as claimed in claim 1.

**3. Claims 2, 3, 5, 8, 12, 14, 15, 18, 21, 23, 24, 27, 29, 30, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenstein et al (US6131016) and Dabak et al (US20040071118) and further in view of the background of applicant's specification (hereby referred to as the background).**

Re claim 2, the modified invention of Greenstein fails to teach a method comprising coding the data stream generated by a multiple-in multiple-out receivers-transmitters system in a multiplexing mode. However the background teaches a MIMO system including a multiplexing MIMO system (¶0002), which operates in a multiplexing mode.

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the multiplexing MIMO system of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to prevent the entire transmitted symbol from being in error (¶0003).

Re claim 3, the modified invention of Greenstein fails to teach a method comprising coding the data stream generated by a multiple-in multiple-out receivers-transmitters system in a diversity mode. However the background teaches a MIMO system including a diversity MIMO system (§0002), which operates in a diversity mode.

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the diversity MIMO system of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002).

Re claim 5, the modified invention of Greenstein teaches a method comprising:  
coding symbols of a first subset of sub-carriers of an orthogonal frequency division multiplexing channel (transmission circuit 202 in fig. 2A of Greenstein, col. 3 lines 5-6 and lines 59-62 of Greenstein); and

coding symbols of a second subset of sub-carriers of an orthogonal frequency division multiplexing channel (transmission circuit 203 in fig. 2A of Greenstein, col. 3 lines 6-7 and lines 59-62 of Greenstein).

Greenstein fails to teach wherein the first subset of sub-carriers is coded in a multiplexing mode and the second subset of sub-carriers is coded in a diversity mode. However, the background teaches the use of a diversity MIMO system or a multiplexing

MIMO system (§0002). One of ordinary skill in the art would have found it obvious to use each system in a MIMO system.

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the diversity and multiplexing MIMO systems of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002) and to prevent an entire transmitted symbol from being in error (§0003).

Re claim 8, the modified invention of Greenstein teaches a method wherein transmitting the second group of symbols comprises: transmitting symbols of the first subset of sub-carriers of an orthogonal frequency division multiplexing channel (col. 3 lines 59-62 of Greenstein) and symbols of the second subset of sub-carriers of an orthogonal frequency division multiplexing channel (col. 59-62 of Greenstein).

Greenstein fails to teach wherein the first subset of sub-carriers is transmitted in a diversity mode and the second subset of sub-carriers is coded in a multiplexing mode. However, the background teaches the use of a diversity MIMO system or a multiplexing MIMO system (§0002). One of ordinary skill in the art would have found it obvious to use each system in a MIMO system.

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to incorporate the diversity and multiplexing MIMO systems of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002) and to prevent an entire transmitted symbol from being in error (§0003).

Re claim 12, the modified invention of Greenstein fails to teach an apparatus wherein the coding mode comprises at least one of a diversity mode and a multiplexing mode. However the background teaches coding incoming bits in a diversity MIMO system (§0002).

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the diversity MIMO system of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002).

Re claim 14, the modified invention of Greenstein fails to teach an apparatus wherein the coded symbol is coded either in a diversity mode or in a multiplexing mode. However the background teaches coding incoming bits in a diversity MIMO system (§0002).

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the diversity MIMO system of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002).

Re claim 15, the modified invention of Greenstein teaches an apparatus wherein the second transmitter is able to transmit two or more coded symbols (col. 3 lines 3-4 of Greenstein, all of the carrier tones is interpreted to be more than one of the coded symbols) but fails to teach wherein at least some of the coded symbols are coded according the diversity mode and at least some other coded symbols are coded according to multiplexing mode.

However the background teaches coding bits in a diversity MIMO system (§0002) and suggests also coding at least some of the symbols in a multiplexing mode (§0003).

Therefore taking the modified teachings of Greenstein and Dabak with the background as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the diversity and multiplexing coding of the background into the method of Greenstein. The motivation to combine the background, Dabak and Greenstein would be to gain sensitivity by exploiting multi path propagation channel property (§0002) and to prevent an entire transmitted symbol from being in error (§0003).

Re claim 18, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 8.

Re claim 21, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 12.

Re claim 23, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 14.

Re claim 24, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 15.

Re claim 27, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 18.

Re claim 29, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 2.

Re claim 30, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 3.

Re claim 32, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 5.

**4. Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenstein et al (US6131016) and Dabak et al (US20040071118) and further in view of Wu et al (US6985434).**

Re claim 10, the modified invention of Greenstein fails to teach an apparatus further comprising:

a channel state analyzer to select the coding mode based on a quality indicator of the orthogonal frequency division multiplexing sub-carrier.

However Wu teaches a controller which selects either time diversity of spatial multiplexing encoding for two groups of sub-carriers (col. 5 lines 30-38), which is selected to satisfy quality of service (col. 5 lines 39-46).

Therefore taking the modified teachings of Greenstein and Dabak with Wu as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the encoding mode selection of Wu into the apparatus of Greenstein. The motivation to combine Wu, Dabak and Greenstein would be maximize the throughput gain (col. 5 lines 46-47).

Re claim 20, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 10.

**5. Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenstein et al (US6131016).**

Re claim 19, Greenstein teaches a wireless communication device comprising: a receiver transmitter system (fig. 2A) operably coupled to two or more dipole antennas wherein (fig. 2B, col. 4 lines 31-34), the multiple-in-multiple-out receivers transmitters system includes a transmitter system (transmission circuits 202 and 203 in fig. 2A) which includes a coding mode selector to select a coding mode of a symbol of an orthogonal frequency division multiplexing sub-carrier (col. 3 lines 59-63, col. 4 line 63 – col. 5 line 1) according to a received channel state information that related to the orthogonal frequency division multiplexing sub-carrier (col. 4 lines 58-63).

Greenstein fails to teach wherein the receiver transmitter system is a multiple-in multiple-out system. However Greenstein does suggest using multiple receive antennas at the receiver (col. 4 lines 31-34). One of ordinary skill would have found it obvious to combine the receiver diversity (col. 4 lines 31-34) with the receiver transmitter base station (fig. 2A). The motivation to combine would be to further improve reception (col. 4 lines 31-34).

Greenstein also fails to teach wherein said coding mode is selectable so that said sub-carrier is able to support the sensitivity required for transmitting in the selected mode. However Dabak teaches wherein a coding mode is selectable so that said sub-



carrier is able to support the sensitivity required for transmitting in the selected mode (¶0032. It is well known in the art that OFDM signals are encoded at the transmitter. Furthermore no specific coding mode is claimed, so any coding mode can be interpreted as the coding mode. The signal gain being adjusted to adjust for any frequency sensitivity in a transmit antenna and fitting the data stream to any required spectral restrictions is interpreted as selecting a coding mode to support the required sensitivity).

Therefore taking the combined teachings of Greenstein with Dabak as a whole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the method of Dabak into the method of Greenstein. The motivation to combine Dabak and Greenstein would be to improve spectral utilization and immunity to interference (¶0029).

Re claim 22, all of the claim limitations as recited have been analyzed and addressed in the above rejections with respect to claim 13.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon-Viet Q. Nguyen whose telephone number is 571-270-1185. The examiner can normally be reached on monday-friday, alternate friday off, 7:30AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David C. Payne can be reached on 571-272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leon-Viet Nguyen/  
Assistant Examiner Art Unit 2611

  
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SUPERVISORY PATENT EXAMINER